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A Beginner’s Guide To Pleading Charter Claims (If You Must)

Let’s do something different today.

For people who have been wronged by some level of Government, what is your recourse? Well, suing is an option, of course. But what would Statement of Claim or Notice of Application look like? How would it be presented?

While there’s no perfect way to draft documents, it’s important to understand that very specific information needs to be included. This is especially true when making allegations that Charter Rights have been violated.

The goal here is to get people thinking about what they have to submit when making constitutional challenges, as well as what to avoid. This list is not exhaustive, but includes some common torts. Even Ottawa published an interesting guide on the Charter.

Note: Many have made the argument over the years that the Charter is worthless, especially in light of the Bill of Rights. This is not meant to address that. Instead, it's to highlight what information is required to provide in order to bring such cases. As usual, this is INFORMATION, not advice.

With that in mind, let's begin.

Pleading Facts And Providing Particulars Necessary

JURISDICTION	PLEAD FACTS	PLEAD PARTICULARS
Federal Court	Rule 174	Rule 181
Alberta	Rule 13.6	Rule 13.7
British Columbia	Rule 3-1(2)(a)	Rule 3-7(17)
Manitoba	Rule 25.06(1)	Rule 25.06(11)
Nova Scotia	Rule 38.02(2) and (3)	Rule 38.03(3)
Ontario	Rule 25.06(1)	Rule 25.06(8)

> Material Facts
> 25.06(1) ***Every pleading shall contain a concise statement of the material facts*** on which the party relies for the claim or defence, but not the evidence by which those facts are to be proved.

> Nature of Act or Condition of Mind
> 25.06(8) Where ***fraud, misrepresentation, breach of trust, malice or intent is alleged, the pleading shall contain full particulars***, but knowledge may be alleged as a fact without pleading the circumstances from which it is to be inferred.

Pleading facts: This means laying out the sequence of events, and giving the who, what, where, when, etc… of what happened. Who said what? Who did what? In the case of alleged Charter breaches, it's not meant to be a legal argument, or to cite case law.

Pleading particulars: Depending on the nature of the allegations, there's an extra requirement to spell out the bad behaviour. Again, it's not meant to devolve into argument. Admittedly though, it can be tricky to argue state of mind at the onset, but something needs to be included.

The above quotes are from the Ontario Rules of Civil Procedure. However, it's virtually identical across jurisdictions. These apply regardless of whether or not there's a Constitutional challenge.

Beyond that, Courts have explicitly ruled on what needs to be pleaded in order to bring Charter related cases. The necessary information is very specific.

Here are some common Charter torts that are brought up.

Facts Required For Section 2a (Religion) Pleading

In the above section, it's explained that it's necessary to plead a "concise statement of material facts". Sounds great, but what do these facts need to cover? Well, for major Charter issues, the Courts have long ago ruled on what's required. There's no excuse for professional lawyers not to know better.

(1) that he or she sincerely believes in a practice or belief that has a nexus with religion, and
(2) that the impugned state conduct interferes, in a manner that is non-trivial or not insubstantial, with his or her ability to act in accordance with that practice or belief

https://www.canlii.org/en/ca/fct/doc/2017/2017fc1092/2017fc1092.html#22
https://www.canlii.org/en/ca/scc/doc/2017/2017scc54/2017scc54.html#par68

It's not nearly enough to say "muh religion", and leave it at that. To bring such a case, litigants must: (a) explain in detail what those beliefs are; and (b) explain how someone else's actions or demands have imposed on those beliefs in a serious way.

Facts Required For Section 2d (Association) Pleading

This is a complicated one, although a good guide is available. While there's much caselaw in the context of collective bargaining (unionization), association is protected under a few grounds.

The purpose of the freedom of association encompasses the protection of
(1) individuals joining with others to form associations (the constitutive approach)
(2) collective activity in support of other constitutional rights (the derivative approach), and
(3) collective activity that enables "those who would otherwise be vulnerable and ineffective to meet on more equal terms the power and strength of those with whom their interests interact and, perhaps, conflict".

https://www.canlii.org/en/ca/scc/doc/2015/2015scc1/2015scc1.html#par54

Essentially, litigants would have to plead that their association was somehow obstructed or prevented. It's worth pointing out that Section 2(d) protects the right of association itself, not necessarily the activities for which people are associated.

Facts Required For Section 6 (Mobility) Pleading

For Section 6(1), Canadian ***citizens*** have the right: (a) to enter; (b) remain in; and (c) leave Canada. Litigants would have to prove that at least one of these was violated.

For Section 6(2), citizens and permanent residents have interprovincial mobility rights to obtain a livelihood in any Province they wish. They would have to claim that discrimination comes from where they reside.

(a) The principle: The right to pursue the gaining of a livelihood in any province;
(b) The exception: This right is subject to any laws or practices of a general application in force in that province;
(c) The exception to the exception: Except if these laws discriminate among persons primarily on the basis of the province of residence.

https://www.canlii.org/en/ca/scc/doc/2013/2013scc47/2013scc47.html#par18
https://www.canlii.org/en/ca/scc/doc/1997/1997canlii17020/1997canlii17020.html#par51

Facts Required For Section 7 (Security) Pleading

(1) plaintiff must plead facts to establish a deprivation of their right to life, right to liberty or right to security of the person.
(2)The claim must then set out facts to show that any deprivation of these rights was effected in a manner contrary to the principles of fundamental justice.

https://www.canlii.org/en/on/onsc/doc/2022/2022onsc2732/2022onsc2732.html#par69
https://www.canlii.org/en/on/onsc/doc/2017/2017onsc2312/2017onsc2312.html#par30

Interestingly, Section 7 "*does not describe any right of a corporation or the purely economic interest of a natural person, nor does it guarantee the right to unrestrained business activity or to practice a particular profession or occupation.*" This was settled decades ago, but lawyers still take clients' money to argue these cases.

https://www.canlii.org/en/on/onsc/doc/1990/1990canlii6753/1990canlii6753.html

Facts Required For Section 12 (Cruel/Unusual) Pleading

(1) plaintiff must show that the action involves some treatment or punishment by the state, and
(2) that such treatment is cruel and unusual

https://www.canlii.org/en/ca/fct/doc/2005/2005fc442/2005fc442.html#par27

It's also noted that: "*A mere prohibition on certain conduct, even if it results in cruel and unusual effects, does not qualify as treatment under s. 12. Punishment means a sanction imposed by the state as a corrective measure for the commission of a particular offence.*"

Facts Required For Section 15 (Equality) Pleading

Despite common perceptions, the Charter doesn't really protect equality at all. Instead, it covers a limited number of grounds, and even that is subject to the politics involved.

Enumerated grounds: explicitly stated in the Charter
Analogous grounds: other ones Courts have endorsed over the years.

ENUMERATED GROUND	ANALOGOUS GROUND
Explicitly In Charter	**Recognized By Courts**
Race	Sexual Orientation
National/Ethnic Origin	Marital Status
Colour	Off-Reserve Band Member
Religion	Citizenship
Sex	–
Age	–
Mental/Physical Disability	–

(1) on its face or in its impact, the state action creates a distinction based on a prohibited ground (either enumerated or analogous); and
(2) the state action imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating or exacerbating disadvantage

https://www.canlii.org/en/on/onsc/doc/2022/2022onsc2732/2022onsc2732.html#par80
https://www.canlii.org/en/on/onca/doc/2021/2021onca534/2021onca534.html#par133

This is why "vaccination status", and similar arguments have failed in recent years. It's not covered under the existing lists, and few have tried to add it as an analogous ground. This is why they fail.

Facts Required For Malfeasance Of Public Office Pleading

(1) the tortfeasor engaged in deliberate and unlawful conduct in his or her capacity as a public official; and,
(2) the tortfeasor knew his or her conduct was unlawful and that their conduct was likely to injure the plaintiff.

https://www.canlii.org/en/ca/fct/doc/2021/2021fc1112/2021fc1112.html#par27
https://www.canlii.org/en/ca/scc/doc/2003/2003scc69/2003scc69.html#par23

Although not a Charter issue, malfeasance is worth mentioning, as it's commonly argued. The necessary elements are easy enough to find. Of course, particulars would have to be included as well. The elements for other torts such as conspiracy or intimidation are easy enough to look up.

Clients Routinely Screwed Over By Inadequate Pleadings

As has been demonstrated, across jurisdictions, there's a requirement to "plead material facts" when filing a case. It's easy enough to find out what those facts must include.

Because so many lawsuits involve malice, breach of trust, malfeasance, or a "conspiracy", there's an added burden to spell out what's been going on.

But what happens when clients pay top dollar for counsel who either doesn't know this, or who can't be bothered to do it properly? Here are some recent examples.

- Adelberg (50 pages)
- Canada Post (18 pages)
- Canadian National Railway (14 pages)
- Dorceus (57 pages)
- Katanik (45 pages)
- Purolator (21 pages)
- Westjet (23 pages)

The above 7 cases have a total of well over 2,000 Plaintiffs, but comprise just 228 pages. That being said, if the: Style of Cause (party names), service addresses and cover pages are removed, it's much less than 228. So, how do you adequately plead Charter violations in a single line, or 2?

You don't.

All of these cases demand money for Charter breaches, but don't plead facts for any of them, *for any client*. And while alleging all kinds of conspiracies, none are really spelled out.

It's disheartening that various Law Societies allow incompetent morons to practice. This is done to detriment of clients, the profession, and to society as a whole. They should all be disbarred, as there's no benefit to letting them keep their licences.

Should prospective litigants be considering Court action, it's necessary to think about what must be pleaded in a Statement of Claim, or Notice of Application. The Rules of Civil Procedure are available publicly, requiring facts and particulars. Similarly, specific elements of Charter torts have been established long ago.

These claims are a good way to screen out prospective lawyers. If they think such a filing is "okay", or is "pretty good", then you're about to get taken advantage of. Disgust and shock are the reactions they should have.

Understanding the information above will put self-reps in a better position than many "professionals".

******Once more, this is INFORMATION, not legal ADVICE. Please take everything here with a grain of salt, and do your own research.***

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